***THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY**

W.P.No. 7920 of 1996

% 14.02.2006

M. Rajasekhara Reddy & others

..... Petitioners

Vs.

$ 1. The District Collector, Krishna District & another.

… Respondents

! Counsel for the petitioner : Sri R. Subba Rao

^ Counsel for Respondents : G.P.for Land Acquisition

<Gist :

>Head Note :

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.7920 of 1996

Date:14.02.2006

Between:

M.Rajasekhara Reddy and others

--------PETITIONERS

The District Collector and another

---------RESPONDENTS

ORDER:

The petitioners challenge the proceedings under the Land Acquisition Act 1894 (for short 'the Act') initiated by the respondents herein in respect of the lands of the petitioners in Sy.Nos.234/1B, 234/3 and 236/1, admeasuring Ac.2.80 cents of Lingavaram village, Gudivada Mandal, Krishna District.

The lands of the petitioners, together with the neighbouring lands in Sy.Nos.234/1B, 234/2,3, 236/P and 237/A were proposed to be acquired in the year 1985. The petitioners filed W.P.No.1376 of 1986 insofar as the proceedings related to their lands. The writ petition was allowed on 09.03.1987 and the notifications under

Sections 4(1) and 6 of the Act were quashed, on the ground that they were not published in the locality. However, it was left open to the respondents to acquire the lands, by issuing a fresh notification. It is in this context that the respondents issued a notification under Section 4(1) of the Act on 25.10.1994 and a declaration under Section 6 on 08.09.1995.

The notifications issued by the respondents under Sections 4(1) and 6 of the Act are challenged, mainly on the ground that the petitioners are small farmers and that alternative lands belonging to the Government are available.

The respondents filed a detailed counter-affidavit. The circumstances that led to the initiation of the acquisition of the lands of the petitioners, the outcome of W.P.No.1376 of 1986 and the factors that led to the issuance of the present notifications are narrated. It is stated that the Government lands, which were available in the village, have been assigned and the lands of the petitioners are situated in between the road and the other acquired lands. The allegation of the petitioners that they are small farmers is partly denied.

The learned counsel for the petitioners submits that the petitioners are small farmers and that the Government had issued instructions and memos from time to time prohibiting acquisition of lands of small farmers. He contends that despite such instructions from the Government, the respondents have proceeded to acquire the lands of the petitioners. He further contends that even though the lands belonging to the Government were available, the respondents are acquiring the lands of the petitioners, at the instance of some interested persons in the locality.

The learned Government Pleader for Land Acquisition, on the other hand, submits that as of now, no Government land is available for providing house sites and that the acquisition of lands of the petitioners became inevitable.

This is the second round of litigation by the petitioners. The first petitioner is the owner of 99 cents, the second petitioner 50 cents and the third petitioner Ac.1.31 cents of wet land in the survey numbers referred to above. For the purpose of acquiring these lands, the respondents issued notifications under Sections 4(1) and 6 of the Act in the year 1985. The petitioners approached this Court by filing W.P.No.1376 of 1986. It was allowed on the ground that the publication of notifications was not done as per the provisions of the Act. As regards the other

portion of the land covered by the said notifications, the respondents have completed the proceedings and the award was also passed.

On account of paucity of funds, the respondents did not proceed in the matter. However, nine years after W.P.No.1376 of 1986 was allowed, the respondents issued a fresh notification in respect of the lands of the petitioners. Though the respondents state that the second petitioner owns Acs.5.10 cents of land in all, they did not dispute the fact that petitioners 1 and 3 are small farmers. The fact that the second respondent is a physically handicapped person is not denied.

One significant aspect of the matter is that even according to the averments in the counter-affidavit, Government land was available by the time the impugned notifications came to be issued. It is stated that the Government land was assigned to 36 beneficiaries in the year 1995-96. The relevant portion of the counter-affidavit reads as under:

> "It is submitted that it is not true to say that there is banjara land belonging to the Government on the western side of the village suitable for house sites, that village site was already assigned to the weaker section people i.e. 36 beneficiaries during the year 1995-96."

If there exists any impending necessity for providing houses to weaker sections, it is not known as to why the respondents did not utilise the available Government land for this purpose, before they have chosen to acquire the lands of the petitioners, which involves huge expenditure in the form of payment of compensation. This Court is compelled to observe that the respondents did not proceed objectively in the matter and on the other hand, there appears to be determined effort to acquire the lands of the petitioners at any cost. Such an approach cannot be countenanced.

The Government issued orders and memos from time to time, discouraging or prohibiting acquisition of lands belonging to the small farmers, for the purpose of providing house sites to the weaker sections. The object underlying such a policy was to ensure that the small farmers are not uprooted from their livelihood in the process of providing house sites to the needy persons. It is only in exceptional cases that the lands belonging to such persons can be acquired. While challenging the earlier acquisition as well as the instant acquisition, the petitioners reiterated their plea that they are the small farmers and that one of them is physically handicapped.

It is no doubt true that the Government is under obligation to look after the welfare of the weaker sections. However, the implementation of welfare scheme should not result in uprooting the livelihood of the small and marginal farmers.

Be that as it may, ten years have elapsed. It is not known whether the same necessity that prevailed when the impugned notifications were issued continues now. The social structure of a village keeps on changing. It is difficult to imagine that the same state of affairs continued for the past ten years. Policy priorities also undergo frequent changes with the passage of time. The state of affairs that exist as of now needs to be taken into account.

For the foregoing reasons, the writ petition is allowed and the impugned notifications are set aside. It is, however, made clear that in case the respondents decided to acquire the lands of the petitioners, they shall be under obligation to examine the matter from the point of view of the petitioners as well as the impending necessity and such a decision shall be evident from the correspondence or the records, which they maintain for this purpose. There shall be no order as to costs.

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14.02.2006

Note:

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